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Attorneys for Respondent  
CITY AND COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ANDREA ESQUIVEL, A minor, by and through her  
Guardian Ad Litem, GINA FLAMENCO, an adult;  
BRENDON RYAN VILLANUEVA, a minor, by and  
through his Guardian Ad Litem, EVELYN  
VILLANUEVA, an adult; KEVIN MARK  
VILLANUEVA, a minor, by and through his Guardian  
Ad Litem, EVELYN VILLANUEVA, an adult;  
MALCOM WRIGHT, a minor, by and through his  
Guardian Ad Litem, BENNY WRIGHT, an adult,

Petitioners,

vs.

SAN FRANCISCO UNIFIED SCHOOL DISTRICT,  
SAN FRANCISCO BOARD OF EDUCATION, CITY  
AND COUNTY OF SAN FRANCISCO, ERIC MAR,  
individually and as a Member of the School Board,  
MARK SANCHEZ, individually and as a Member of  
the School Board, JAME KIM, individually and as a  
Member of the School Board, KIM-SHREE MAUFAS,  
individually and as a Member of the School Board,  
NORMAN YEE, individually and as a Member of the  
School Board, JILL WYNNS, individually and as a  
Member of the School Board, HYDRA MENDOZA,  
individually and as a Membe of the School Board,  
CARLOS GARCIA, individually and as the  
Superintendent of the San Francisco School District, DAN  
KELLY, individually and as a former Member of the  
School Board, SARA LIPSON, individually and as a  
former Member of the School Board, DOES 1 to 100,

Respondents.

Case No. CV 07 5709 MHP

**RESPONDENT CITY AND  
COUNTY OF SAN  
FRANCISCO'S NOTICE OF  
MOTION AND MOTION FOR  
LEAVE TO FILE MOTION TO  
DISMISS**

Hearing Date: None requested.

Trial Date: Not set

**TO PETITIONERS AND THEIR ATTORNEY OF RECORD:**

**PLEASE TAKE NOTICE** that Respondent City and County of San Francisco (the "City"), seeks ten additional days to file a responsive pleading in this case and seeks leave to file a motion to dismiss this action against the City pursuant to rule 12(b)(6) of the Federal Rules of Civil before the initial Case Management Conference. The City seeks an additional ten days to respond to the petition because the Petitioner's counsel advised counsel for the City on January 16, 2008 and again on February 7, 2008 that the City would be dismissed from this action. The City has requested that petitioners dismiss the City from this action on the grounds that the City and the San Francisco Unified School District are separate public entities and therefore the City has no authority to grant the relief requested in the petition. Petitioner's counsel agreed to dismiss the City, but has failed to do so. Therefore, the City must file a responsive pleading, and the City seeks leave to file a Motion to Dismiss the City because the City is a separate public entity from the San Francisco Unified School District and the City does not set the curriculum for the School District and therefore has no authority to provide the relief requested by the petition on file in this case.

As explained in the points and authorities below, the City makes this motion on grounds: 1) that the Federal Rules require any such motion to be filed before the date set for a case management conference in this case; and 2) Defendants believe that the proposed motion will dispose of the entire case against the City, saving the parties' and the Court's resources.

This motion is based on this Notice of Motion, the Memorandum of Points and Authorities below, and the complete file and records of this action. The City does not request oral argument because it believes the Court may decide this Motion without a hearing based on these items and any subsequent pleadings filed.

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR  
LEAVE TO FILE MOTION TO DISMISS**

Pursuant to the Court's Standing Orders, "[m]otions to dismiss shall not be filed before the initial Case Management Conference except by leave of court."

1 In this case, however, the City is required by Federal Rules of Civil Procedure and a  
2 Stipulation and Order (filed December 28, 2007) to file a responsive pleading on or before February  
3 11, 2008. The initial Case Management Conference is currently scheduled for February 25, 2008.  
4 Because Defendants believe they have good faith grounds to move to dismiss the petition for  
5 declaratory, temporary and permanent injunctive relief against the City, and that such a motion will  
6 dispose of the entire action against the City, the City requests leave to file a Motion to Dismiss as its  
7 responsive pleading February 21, 2008.

8 In order to meet the deadline set forth in Fed.R.Civ.P. 12 and the Stipulation and Order, the  
9 City files its Motion for Leave to file its Motion to Dismiss without setting a hearing date. The  
10 proposed order on this Motion for Leave requests the Court to set deadlines for further briefing and a  
11 hearing date on the Motion to Dismiss if this Motion for Leave is granted. In the event that the  
12 instant Motion is not granted, the Respondent requests the Court extend the City's deadline to respond  
13 to the Complaint pursuant to Fed.R.Civ.P. until a date after the Initial Case Management Conference.

14 DATED: February 11, 2008

15 DENNIS J. HERRERA  
16 City Attorney  
17 JOANNE HOEPER  
18 Chief Trial Deputy

19 By: \_\_\_\_\_/s/\_\_\_\_\_  
20 JAMES F. HANNAWALT  
21 Deputy City Attorney

22 Attorneys for Respondent City and  
23 County of San Francisco  
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